UT 06-5
Tax Type: Use Tax
Issue: Use Tax On Aircraft Purchase

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS	**No. 00-ST-0000**
	IBT# 0000-0000
v.	**NTL# 00 0000000000000**
***JOHN DOE*, Taxpayer**	**Ted Sherrod Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General George Foster on behalf of the Illinois Department of Revenue; Edwin Josephson, Esq. of Chuhak & Tecson, P.C. on behalf of *John Doe*.

Synopsis:

John Doe ("taxpayer"), a resident of Illinois, purchased an aircraft from *ABC* Corp., an Oregon aircraft dealer and took possession of the aircraft on or about March 7, 2001 in Anywhere, Oregon. The Illinois Department of Revenue ("Department") determined that the aircraft was purchased for use in Illinois and sent the taxpayer a Notice of Tax Liability ("NTL") for Illinois use tax. The taxpayer filed a timely protest to this NTL, arguing that the aircraft was not used in Illinois. A hearing on this matter was held on June 28, 2006 at which the taxpayer and *Smith Jones*, an aircraft service manager with *ABC* Services of *Anywhere* Inc., testified. During this evidentiary hearing,

the Department introduced the NTL at issue and related documents under the certificate of the Director, and the taxpayer introduced no documentary evidence into the record in support of its claim. After reviewing the testimony and other evidence presented, it is recommend that the Notice of Tax Liability be upheld.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the SC-10-K, Audit Correction and/or Determination of Tax Due (herein "Correction of Return") and Notice of Tax Liability ("NTL") number SF 0504044941000 showing use tax and related tax liabilities. Department Group Exhibit ("Ex.") 1.[1]

2. The taxpayer purchased a 1984 Aero Vodochody L 39C MIG fighter trainer aircraft (Tr. p. 19), serial number 00000, registration number 0000 (hereinafter the "aircraft") that had been designed and manufactured in Czechoslovakia, from *ABC* Corp., a registered aircraft dealer doing business in Oregon on or about March 7, 2001. Tr. pp. 6, 21; Department Group Ex. 1. The taxpayer accepted delivery of the aircraft at the dealer's place of business located in *Anywhere*, Oregon. Tr. p. 21. No sales tax was paid on the aircraft at the time it was purchased. Tr. p. 6; Department Group Ex. 1 (Audit Comments).

3. The taxpayer paid $449,000 for the aircraft. Department Group Ex. 1 (EDA-95).

[1] Unless otherwise noted, findings of fact apply to the liability date shown on the NTL and the period reviewed by the auditor, June 2001 through March 2003. See Tr. p. 27; Department Group Ex. 1 (Audit Comments).

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4. The taxpayer registered with the Federal Aviation Administration ("FAA") as the owner of the aircraft on April 14, 2001. Department Group Ex. 1 (FAA Bill of Sale).

5. The taxpayer is the owner of *Doe* Companies, a machine tools company based in *Anywhere*, Illinois, and holds a controlling stock ownership interest in *XYZ* Jet Center and *ABC* Services of *Anywhere*. Department Group Ex. 1 (Audit Comments). *Smith Jones* is the general manager of Aircraft Services for *ABC* Services of *Anywhere* Inc. Tr. p. 41. He has been general manager since 1997 and was the general manager during the period June 2001 through March 2003 that the auditor reviewed. *Id.*

6. The taxpayer's address shown on the aircraft Bill of Sale and the Aircraft Registration Application filed with the Federal Aviation Administration on April 14, 2001 indicates that the taxpayer is a resident of *Anywhere*, Illinois. Tr. p. 7; Department Group Ex. 1.

7. The aircraft was flown between various destinations within and outside of *Anywhere* during the period June 2001 through March 2003. Tr. pp. 21, 22, 26, 27, 32, 43.

8. The taxpayer acquired the aircraft for the purpose of ultimately being contracted for use by the United States Air Force in training activities to be conducted at an Air Force Base. Tr. pp. 21, 43, 50; Department Group Ex. 1 (Audit Comments). While the Air Force initially determined the aircraft to be fit for its intended use, it ultimately refused to approve the aircraft for use for training purposes, and never entered into a contract with the taxpayer to use the aircraft. Tr. p. 27, 28; Department Group Ex. 1 (Audit Comments).

Conclusions of Law:

The Use Tax Act, 35 **ILCS** 105 *et seq.* (hereinafter referred to as the "UTA") imposes a tax "upon the privilege of using in this state tangible personal property purchased at retail from a retailer … [.]". *Id.* at 105/3. Pursuant to this provision, the Department issued a Correction of Return and Notice of Tax Liability assessing use tax upon the taxpayer as a result of its purchase of the aircraft at issue in this case. Section 12 of the UTA (35 **ILCS** 105/12) incorporates by reference section 4 of the Retailers' Occupation Tax Act (35 **ILCS** 120/1 *et seq.*) which provides that the correction of return issued by the Department is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax due, as shown therein. *Id.* at 120/4. Once the Department has established its *prima facie* case by the submission of the corrected return into evidence, the burden shifts to the taxpayer to overcome this presumption of validity. Clark Oil & Refining Co. v. Johnson, 154 Ill. App. 3d 773, 783 (1st District 1987).

In order to overcome the presumption of validity attached to Department's corrected return, the taxpayer must produce competent evidence, identified with its books and records showing that the Department's return is incorrect. Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968). To prove its case, a taxpayer must present more than its testimony denying the accuracy of the Department's assessment. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1st Dist. 1991). On examination of the record in this case, I find that the taxpayer has failed to demonstrate by testimony corroborated by books, records or other documents, evidence sufficient to overcome the Department's determination that use tax is due.

The record in this case shows that the aircraft at issue was sold to the taxpayer by an Oregon aircraft dealer for delivery to the taxpayer, a resident of Illinois having his principal residence in *Anywhere*, Illinois. Tr. pp. 7, 21; Department Group Ex. 1. Section 4 of the Use Tax Act (35 **ILCS** 105/4) provides that "[E]vidence that tangible personal property was sold by any person for delivery to a person residing or engaged in business in this State shall be prima facie evidence that such tangible personal property was sold for use in this State." 35 **ILCS** 105/4. The record in this case shows that the taxpayer owned the aircraft in controversy following delivery and that the taxpayer registered the aircraft in his name as the owner, showing as his residential address an address in Illinois. Tr. pp. 6, 7, 21; Department Group Ex. 1. The taxpayer testified that he arranged for the aircraft to be stored. Tr. pp. 26, 34. He also arranged to have the aircraft serviced and repaired. Tr. pp. 27, 32-36, 43. Moreover, he hired a pilot and made other arrangements to have the aircraft flown within *Anywhere*, and between *Anywhere* and Wisconsin during the period in controversy. Tr. pp. 27, 32-36, 43. All of these acts are clear indicia of ownership and the exercise of control over tangible personal property, the aircraft.

The taxpayer has attempted to rebut the Department's case through testimony that the aircraft in controversy was not purchased for the taxpayer's personal use or for any use related to the taxpayer's business enterprises. Tr. pp. 20, 21. However, it is not necessary that a person owning an aircraft utilize it for a personal or business related purpose in order to engage in a taxable use of the property under the statutory definition of use contained in Illinois Use Tax Act. "Use", for purposes of section 2 of the Use Tax Act (35 **ILCS** 105/2), means the exercise by any person of any right or power over

tangible personal property incident to the ownership of the property, which the taxpayer clearly engaged in.

The taxpayer's principal basis for claiming that no tax is due is his allegation that the aircraft in controversy was never flown into or otherwise used in Illinois. Tr. pp. 6-8. In support of this claim, the taxpayer and *Smith Jones*, who appeared on the taxpayer's behalf, testified that the aircraft in controversy was purchased for the sole purpose of being contracted to the United States Air Force for use by the Air Force in training exercises. Tr. pp. 21, 27, 28, 43, 50; Department Group Ex. 1 (Audit Comments). However, the Air Force determined that the aircraft failed to meet its required standards and ultimately refused to agree to utilize the aircraft. Department Group Ex. 1 (Audit Comments).

The taxpayer testified that the aircraft was "domiciled" or based in *Anywhere*. Tr. p. 26. The taxpayer further testified that, with the exception of test flights conducted exclusively in *Anywhere*, the aircraft was only flown to maintenance bases owned by the taxpayer in Wisconsin and Montana. Tr. pp. 22, 27, 32-36.

The principal problem presented by the taxpayer's evidence is that the taxpayer's ownership or use of storage and/or maintenance facilities in *Anywhere*, Wisconsin and Montana has not been corroborated by the introduction into the record of any documentation whatsoever. Indeed, there is no corroborating evidence of any kind that would show where the aircraft was flown or stored.

Evidence that the aircraft was flown only in states other than Illinois might have included flight logs, which were requested by the auditor. *Smith Jones*, general manager of *ABC* Services of *Anywhere* Inc. (Tr. p. 41) testified that flight logs showing the

origination and destination of each flight were not produced because the FAA did not require such information. Tr. pp. 44, 45, 50. However, the taxpayer has cited no FAA rules, regulations or instructions to corroborate this claim. Moreover, the taxpayer, who was licensed as a pilot to operate the aircraft, has failed to explain why neither he nor any other licensed pilot of the aircraft failed to maintain a record of the aircraft's flights in their pilot logbooks showing pilot flight experience as required by FAA regulation 14 C.F.R. § 61.51(b) which requires the entry of the "[L]ocation where the aircraft departed and arrived … [.]"

Even if no flight logs were required or maintained, and pilot logbooks were not prepared, the taxpayer could have corroborated his claim regarding the location of the aircraft through the introduction of any number of other documents. Such documents might have included hanger receipts, which the auditor requested, or other similar aircraft storage records. Even if one accepts the taxpayer's claim that no log books of any kind were kept, it is difficult to believe that no documentation of any kind relevant to the taxpayer's claim exists or has been maintained. However, no evidence of this nature has been introduced.

Particularly problematic to the taxpayer's claim is his failure to produce tax records showing the payment of use tax in any state. The taxpayer has testified that the aircraft was "domiciled" in *Anywhere*. Tr. p. 26.[2] However, to accept this claim, one

[2]The taxpayer testified that the aircraft was stored "most of the time" in Montana, a state that does not impose a use tax on tangible personal property stored or used in that state. Tr. p. 34. However, this testimony is contradicted by the testimony of *Smith Jones*, the taxpayer's own witness, who testified that the aircraft was never stored in Montana. Tr. p. 46. Moreover, testimony that the aircraft was stored in Montana is in conflict with the taxpayer's testimony that the aircraft was "domiciled" in *Anywhere*. For these reasons, I do not find the taxpayer's testimony that the aircraft was stored in Montana to be credible.

must assume that the taxpayer deliberately failed to comply with Colo. Rev. Stat. § 39-26-202 which provides in part as follows: "there is imposed and shall be collected from every person in this state a tax … for the privilege of storing, using, or consuming in this state any articles of tangible personal property purchased at retail." See also Colo. Regs. § 26-202; Aspen Airways, Inc. v. John H. Heckers, Director of Revenue, 499 P. 2d 636 (Colo. App. 1972), holding that an aircraft brought into *Anywhere* over which a taxpayer exercised rights of control and disposition was subject to *Anywhere* use tax.

As noted above, in order to rebut the Department's *prima facie* case, it was incumbent upon the taxpayer to introduce documentary evidence corroborating his claim into the record. Copilevitz, *supra*. In lieu of such documentation, the taxpayer seeks to rely upon only his own self-serving testimony and the testimony of an employee or agent of a company the taxpayer controlled. This testimony is, by its very nature, suspect. Acceptance of such testimony at face value, without corroborating evidence, would defeat the purpose of section 35 **ILCS** 120/4 (incorporated by reference into the UTA at 35 **ILCS** 105/12) which places the burden of proof and the burden of production squarely upon the taxpayer seeking to prove that the tax in controversy is not applicable. See Mel-Park Drugs, *supra*; Novicki v. Department of Finance, 373 Ill. 342 (1940). See also 35 **ILCS** 120/7, incorporated by reference into the UTA at 35 **ILCS** 105/12. But for the legislature's decision to place the burden of proof and the burden of production upon taxpayers, a taxpayer would be able to prevail merely by denying the Department's claims and refusing to disclose all of the pertinent books and records in its possession. Requiring the Department rather than the taxpayer to produce concrete evidence regarding the taxpayer's tax compliance claims would seriously undermine the

Department's ability to police and enforce tax compliance since such information is ordinarily in the possession of the taxpayer rather than the Department.

In sum, testimonial evidence, upon which the taxpayer's entire case rests, is as a matter of law insufficient to rebut the Department's *prima facie* case. Mel-Park Drugs, *supra*; A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826, 833-34 (1st Dist. 1988) ("A taxpayer cannot overcome the DOR's prima facie case by merely denying the accuracy of its assessments. [I]nstead, evidence must be presented which is consistent, probable, and identified with books and records."). As a consequence, testimony that the aircraft in controversy was not used in Illinois that is not corroborated by any documentary evidence whatsoever is a completely insufficient basis for a determination that no use of the aircraft in this state ever occurred. Accordingly, based on the evidence presented, I must conclude that the taxpayer has failed to prove that it did not use the aircraft in Illinois in a manner requiring the taxpayer to pay the tax that the Department has determined to be due.

WHEREFORE, for the reasons stated above, it is my recommendation that the Department's Notice of Tax Liability number 00 0000000000000 be affirmed in its entirety.

Ted Sherrod
Administrative Law Judge

Date: September 22, 2006